



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Child Day-Care Council
VAC Chapter Number:	22 VAC 15-51-10 et seq.
Regulation Title:	Background Checks for Licensed Child Day Centers
Action Title:	Repeal Regulation and Promulgate New Regulation
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action will repeal 22 VAC 15-50-10 et seq. and adopt 22 VAC 15-51-10 et seq. The current background checks regulation went back into effect on May 18, 2000, at the end of effective dates for an emergency regulation resulting from passage of SB 419 and HB 1388 during the 1998 session of the General Assembly. This proposed regulation incorporates relevant *Code of Virginia (Code)* changes from 1995 to the present time, including recodification of Title 63.1 of the *Code* during the 2002 session of the General Assembly. It adds sections, reorganizes content, uses more descriptive headings, and increases use of the active voice to increase clarity of the regulation. It responds to questions and comments about background checks that have been received during the past several years.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The *Code*, at §§ 63.2-1734 and 63.2-1735, gives the Child Day-Care Council the statutory authority to adopt regulations for the operation of licensed child day centers in Virginia. *Code* sections §§ 63.2-1719, 1720, 1721 and 1722 establish background checks and set prohibitions if a person is found to have certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect. The regulation is necessary to implement the required *Code* provisions.

The above *Code* citations can be accessed on the internet at:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-1719>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-1720>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-1721>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-1722>

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The major purpose of the replacement regulation is to incorporate relevant changes in the *Code* since 1995. The other major purpose is to strengthen the regulation by addressing issues that have been raised during the past several years, and by reorganizing and adding sections to make it more functional.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The primary *Code* changes reflected in the proposed regulation are:

1. Expanding the list of crimes that are barriers to operating, working or volunteering at a child welfare agency;
2. Including prior adult convictions, and certain juvenile convictions and adjudications of delinquency as offenses;
3. Clarifying that manslaughter is a barrier crime;
4. Mandating the search of the child abuse central registry;
5. Adding a founded complaint of child abuse or neglect as a prohibition to licensure, employment, volunteering, or being an applicant or agent;
6. Requiring that a person denied licensure, employment, or staff volunteer status due to a background checks result be given a copy of the relevant finding;
7. Referencing a waiver of disqualification due to certain criminal convictions, as identified in Title 63.2 at 63.2-1723;
8. Introducing the phrase “background checks” to mean a sworn statement or affirmation, a criminal history record check, and a search of the central registry;
9. Limiting volunteers required to obtain background checks to those who will be alone with any child in the performance of their duties;
10. Limiting employees required to obtain background checks to those involved in the day-to-day operation of the licensed child day center or who are alone with, in control of, or supervising one or more children;
11. Deleting the requirement that board members, upon application for licensure, must obtain background checks unless the board member functions in another capacity that requires the checks;
12. Clarifying that only the applicants of licensed child day centers and those persons who are agents at the time of application must have the background checks completed prior to being involved in the day-to-day operations of the center or being alone with, in control of, or supervising one or more of the children;
13. Changing the time period for obtaining criminal history record check records and central registry findings from 21 days to within 30 days; and
14. Clarifying that there is no penalty if the licensed child day center has applied for a background check timely and it has not been obtained due to administrative delay.

Other changes include additions that further explain the background check process. Among these are:

1. Having a separate regulation for licensed child day centers;
2. Reorganizing the document so the sworn statement or affirmation, criminal history record report, and central registry finding do not duplicate the same statements and make the document longer;
3. Changing the word “shall” to “must,” and, where applicable, using “must not,” or “may,” as approved by the Office of the Registrar; and
4. Adding sections describing who isn’t covered by the regulation; explaining requirements for satisfactory background checks; explaining the consequences of unsatisfactory background checks findings; and describing the waiver of criminal conviction.

There are also content changes that reflect current practice or are responsive to questions from the public and facilities. These include, but are not limited to:

1. Allowing satisfactory background checks for contract employees to be accepted if dated less than six months prior to when the contract agencies begin to provide services at facilities;
2. Accepting a copy of the central registry finding;
3. Providing that a background check remains valid at a licensed child care center as long as no more than 12 months have passed from when the person began a leave of absence, was terminated from employment from the center, or was transferred to a center owned and operated by the same employer or entity;
4. Allowing a person who leaves a licensed child day center to take the criminal history record report or central registry finding, if the report or finding is less than 91 days old, provided that the center keeps a copy of any report that was taken and writes on the copy of the report that it is a copy;
5. Requiring background checks every three years from the dates of the previous checks.
6. Clarifying that the Department has the right to revoke or deny a license based on background checks results or failure to obtain background checks;
7. Explaining that an employee or volunteer may continue to work or provide services if the criminal history record request or request for search of the central registry was submitted within seven calendar days of the person beginning employment or volunteer service, but the report or finding is not returned within 30 calendar days;
8. Providing that the Department may require a new background check relevant to a suspicion of a barrier crime conviction, a felony conviction, or a founded complaint of child abuse and neglect;
9. Allowing satisfactory background checks for contract employees and substitute staff from temporary agencies to be viewed, accepted, and copies maintained;
10. Permitting the Department to release information about disqualifying backgrounds to licensed child care centers that are covered by this regulation; and
11. Informing the person that a search of the central registry and a criminal history record are being requested.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The public is expected to benefit from this regulation. The requirements that reflect the *Code*, and the other requirements, offer protection for children who receive care in licensed child day centers during a portion of the day. The centers covered by this regulation will have increased flexibility to shift staff and use contract staff without obtaining repeat background checks, but all persons will be required to resubmit checks every three years to assure availability of updated background information.

The Council sees no disadvantage to the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There are no projected additional costs to the state to implement and enforce the proposed regulation. The regulation applies to licensed child day centers.

The \$5 cost for search of the central registry is required by law and has been in effect since July 1998. The costs of repeat checks for affected parties, the deletion of categories of people required to obtain checks, and the increased flexibility to accept existing satisfactory background checks results are anticipated to balance each other out, with no aggregate fiscal impact on facilities.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Title is different

The title is changed from “Regulation for Criminal Record Checks for Child Welfare Agencies” to “Background Checks for Licensed Child Day Centers.”

Consequence: The new title reflects the sworn statement or disclosure that was part of the current regulation and addition of Code-mandated searches of the central registry, per Title 63.2, Subtitle IV, Chapter 17, Article 3 “Background Checks.”

Table of Contents is changed and expanded

“Sworn Disclosure Statement” and “The Criminal Record Report” are deleted as major sections of the regulation. The proposed Table of Contents consists of: “Defining words and phrases; Describing background checks; Identifying who isn’t covered by this regulation; Identifying who is covered by this regulation; Explaining requirements for satisfactory background checks; Explaining consequences of unsatisfactory background checks findings; Keeping background checks records; Describing the waiver of criminal conviction.”

Consequence: The proposed Table of Contents is organized according to the process of the background checks requirements and the requirements at each stage in the process. It also adds a reference to the *Code* provision for waiver of criminal conviction provisions.

Changed and deleted definitions:

“Applicant for licensure or registration” is changed to delete, and separately define, the words “applicant” and “agent.” The definition also deletes officers of boards because they are no longer required to obtain background checks by virtue of their office. It explains that, in the case of sole proprietorship, the applicant is the individual owner. In the case of partnership, corporation, limited liability company, public agency or similar entity, the applicant designates at least one individual who must comply with the applicant’s obligation on its behalf and must include all individuals who will be on site exercising direction over the operation..

“Barrier crimes” is changed from a general description of barrier crimes, and the list in effect in 1995, to the current list of convictions identified in the *Code* that are barriers to licensure. The crimes that are added to the current regulation as barrier crimes are: manslaughter, malicious wounding by mob, assault and bodily wounding, car jacking, extortion by threat, felony stalking, arson, burglary, any felony violation related to possession or distribution of drugs, drive by shooting, use of a machine gun in a crime of violence, aggressive use of a machine gun, use of a sawed-off shotgun in a crime of violence, possession of child pornography, electronic facilitation of pornography, employing or permitting a minor to assist in an act in the “obscenity and related offenses” Article 5 of Chapter 8 of Title 18.2 of the *Code*, delivery of drugs to prisoners, escape from jail, felonies by prisoners, and an equivalent offense in another state. Consequence: The definition of “barrier crimes” complies with the *Code*.

“Central Criminal Records Exchange” is changed to delete information about the Virginia State Police that appears in 22 VAC 15-51-20.

Consequence: The information deleted from the definition section is more functional in the text of the regulation.

“Center” is added to mean licensed child day center.

Consequence: Definition of the term “center” reduces wordiness throughout the document.

“Criminal record report” is changed to “criminal history record report” to conform to current *Code* language, and the information about the data provided is moved to 22 VAC 15-51-20.

Consequence: The new definition complies with the *Code* and the moved information is more functional in the text of the regulation.

“Facility” is deleted.

Consequence: A term no longer used in the document is eliminated

“Licensee” is added to mean any individual, partnership, association, public agency, or corporation to whom the license is issued.

Consequence: The reader has a definition for a term used in the document.

“Officer of the board” is deleted.

Consequence: An unnecessary term is eliminated.

“Parent volunteer” is changed only by updating *Code* references.

Consequence: The change allows the reader to find the correct *Code* references.

“Sworn disclosure statement” is renamed “sworn statement or affirmation” to comply with current *Code* language and adds the founded complaint of child abuse or neglect.

Consequence: The definition now complies with the *Code*.

“Volunteer” is changed to “staff volunteer” and is described as someone who provides services without pay and who is alone with a child or children in performance of his duties.

Consequence: The definition complies with recodification changes.

Definitions added for readability:

“Code,” “Commissioner,” “Department,” “Department representative,” “Local agency,” “May,” “Must not,” and “Must” are added definitions.

Consequence: Defining these terms makes the document more readable for persons unfamiliar with state government. “May,” “must not,” and “must” are defined in precise terms and allow elimination of the term “shall” that is not used in everyday speech. The replacement of “shall” with “must” has been approved by the Office of the Registrar.

“Contract agency” and “contract employee” are added to provide clarification about certain occasional employees.

Consequence: Readers will be less likely to be confused about the applicability of the regulation to contract agencies and contract employees.

“Criminal history record check” and “Criminal history record report” are added to explain how the Virginia State Police checks on crimes and what the agency does after checking the criminal history record.

Consequence: The definitions fill in information about the background checks process.

“Disqualifying background” is added to explain the consequence of an unsatisfactory background check and to clarify at what point in the appeal process a person is considered to be the subject of a founded complaint of child abuse or neglect.

Consequence: The definition makes the link between an unsatisfactory background check and the ability to own, operate, work at, or volunteer at a licensed child day center.

“Other felony” is defined to include the full explanation in the *Code*.

Consequence: The full explanation is not necessary every time the regulation means conviction for any felony in the last five years that is not a barrier crime felony.

Definitions added to reflect the background checks provisions in the *Code*:

“Background checks” is added because it is the new title for Article 3 of Title 63.2, Subtitle IV, Chapter 17.

Consequence: This establishes consistency in language between the regulation and the *Code*.

“Central registry” is added to explain the source of a central registry finding.

Consequence: Adding the definition introduces the reader to the Department of Social Services’ registry of founded complaints.

”Central registry finding” is added to help the reader understand what is done with the search of the central registry.

Consequence: Adding the definition provides an explanation of the *Code* phrase “information from the central registry.”

“Involved in the day-to-day operations” is added to describe a term found in the *Code*.

Consequence: Adding the definition provides an explanation of a phrase used in the *Code*.

“Licensed” is added to reference a particular regulated status.

Consequence: Readers will be aware of the categories of providers the *Code* is referencing when the word “licensed” is used.

22 VAC 15-50–20 is Deleted

This section in the current regulation is deleted. The current regulation summarizes background checks requirements required in 1995 and references the 1995 *Code*. The proposed regulation is reorganized by stage in the background checks process. Throughout the proposed regulation, reference is made to relevant *Code* sections.

Consequence: Current *Code* references are used. Explanations are provided, which will respond to questions that have been raised over the past seven years.

22 VAC 15-51-20 New Section

This section adds search of the central registry as a background check, as required by the *Code*, and lists the three background checks: sworn statement or affirmation, criminal history record check, and search of the central registry.

Consequence: The addition is important because Title 63.2, Subtitle IV, Chapter 17, Article 3 is entitled “Background Checks, “ but neither the *Code* nor the current regulation explicitly lists what the checks are. Listing them in the regulation highlights the importance of all three.

22 VAC 15-51-30 New Section

This section is provided to facilitate use of the regulation. It explains that all child welfare agencies that are not licensed child day centers are not covered by this regulation. It refers the reader to 22 VAC 40-191-10 et seq.

Consequence: The reader can quickly determine which facilities are not governed by this regulation.

22 VAC 15-50-30 is reorganized; current regulation information is moved or deleted

In the current regulation, this section explains that a sworn disclosure shall be completed prior to employment or commencement of volunteer service. That requirement is moved to 22 VAC 15-

51-40.A and uses the updated terminology “sworn statement or affirmation.” The current regulation requires that the statement or affirmation be attached and filed with the criminal record report. This requirement is deleted because it is unnecessary. The current regulation also includes the stipulation that making a false statement is a Class 1 misdemeanor. This stipulation is now in 22 VAC 15-51-10, in the definition of “sworn statement or affirmation,” and in 22 VAC 15-51-60 to clarify that it applies to anyone required to submit a sworn statement or affirmation.

Consequence: The proposed regulation adds current terminology and includes sworn statement or affirmation requirements added to the *Code* since 1995.

22 VAC 15-50-40 is reorganized and information is added

1. Part “A” of 22 VAC 15-51-40 describes the Code-mandated requirement for submission of sworn statements or affirmations, searches of the central registry, and criminal history record reports at the time of application for licensure.
Consequence: The regulation reflects *Code* requirements.
2. A change is that the sworn statement or affirmation now requires disclosure of **any** conviction or being the subject of **any** pending criminal charges.
Consequence: The regulation reflects a *Code* requirement.
3. Part “B” describes background checks requirements after the initial licensure. The requirement that a criminal record report shall be provided prior to the 21st day of employment or volunteer services is now in a table in part “B.” The day is changed to “within 30 days,” to comply with recodification language.
Consequence: The timeline now complies with the *Code*.
4. The content of “C,” that a person is ineligible for employment, volunteer service, or any facility-related activity if the report contains convictions of the barrier crimes, is moved to 22 VAC 15-51-60. Language is changed from “any facility related activity” to persons who are “involved in the day-to-day operations of such agency or who are alone with, in control of, or supervising one or more children” to reflect current *Code* language.
Consequence: The proposed regulation complies with current *Code* language.
5. The confidentiality requirements in part “E” are changed. The current requirement is that “reports on employees and volunteers be received only by the facility administrator, board president, licensee, registered provider, or their designee.” The proposed requirement, in 22 VAC 15-51-70.D, provides that “applicants and administrators, and their designees, are the only center staff who may have access to these documents.”
Consequence: The change places the information with other content related to keeping background checks records. The change reduces words by using the already-defined term “applicant” instead of listing all the entities that are considered applicants, and it gives applicants and administrators the discretion to designate those who may have access to confidential documents, but deletes the board president from this list.

6. The whole section is restructured. Part “A” lists the background checks required for licensed child day centers at the time of application. Part “B” lists the background checks required after initial licensure. Part “C” provides requirements for contract employees and employees hired by contract agencies. Parts “D” and “E” explain that reports and findings must be current to be accepted by a center or the Department.
Consequence: The restructuring makes it easier for the reader to comply with requirements because they are listed by the stage in the background checks process.
7. All references to facilities not covered by this regulation are deleted.
Consequence: The regulation addresses only the type of regulated care for which the Child Day-Care Council has authority to promulgate regulations.

Additions found in the tables that are not already identified are:

1. Part “A” provides that any agent at the time of application who is or will be involved in the day-to-day operations of the licensed child day center or who is or will be alone with, in control of, or supervising one or more children must submit background checks upon application for licensure.
Consequence: The proposed regulation complies with recodification of Title 63.1 of the *Code* as Title 63.2. Because “agent” is defined in the proposed regulation, the reader will know whom the *Code* references regarding being alone with, in control of, or supervising one or more children.
2. Part “B” provides that a sworn statement or affirmation must be submitted whenever a new person is designated as an applicant, licensee, or agent who is or will be involved in the day-to-day operations of the licensed child day center or who is or will be alone with, in control of, or supervising one or more of the children. It also applies to anyone who will have access to child and family records. The search of the central registry and criminal history record check must be completed before the end of 30 days after the change.
Consequence: The reader is informed that the requirements for an applicant, licensee, and agent apply to anyone who fits any of those categories at any time. The provision will provide increased security because anyone who assumes one of the above-referenced roles must furnish background checks findings.
3. In part “C” there is a requirement for independent contract employees, and contract employees hired by contract agencies, who will be involved in the day-to-day operations of the licensed child day center or will be alone with, in control of, or supervising one or more children, to obtain background checks. The center has a choice of two ways to fulfill this requirement. The center **may** obtain background checks according to the requirements for other center employees. Alternatively, the center must: a) view the original required background checks maintained by the contract employee or contract agency and b) accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at centers. Staff must write on the copies of the criminal history record reports that they are photocopies of originals that center staff verified.
Consequence: This provision recognizes the unique employment status of an independent contractor or contract agency. It permits licensed child day center staff to view original

background checks results but maintain copies of originals in center files. It allows centers the choice of applying the same criteria for background checks that the regulation requires for all other employees. It also allows centers the choice of accepting background checks results that are less than six months old, rather than requiring new checks if the current ones are more than 90 days old.

4. The current regulation has no provision for re-checking backgrounds, as long as a person retains the same status at the same facility. Part “B” provides that any applicant, licensee, agent, employee, and staff volunteer must acquire the three records checks within three years of the dates of the last sworn statement or affirmation, most recent central registry finding, and most recent criminal history record check report.
Consequence: Protection for children is increased because persons covered by the regulation must re-submit the background checks every three years.

5. Part “B.4” provides that: “a licensed child day center must not accept a required criminal history record report or a central registry finding from an applicant, licensee, or other person required to obtain background checks that is dated more than 90 days prior to the date of application, employment, or volunteering.” The exception for contracting agencies at 22 VAC 15-51-50.A is noted.
Consequence: The requirement strengthens the ability of licensed child day centers and the Department to prevent a person required to have background checks who has a recent conviction or founded disposition of child abuse or neglect from being associated with children in licensed child day centers.

6. The current requirement, at 22 VAC 15-51-40.B, that volunteers obtain background checks is changed. The change in the proposed regulation, at “B,” is to indicate that parent-volunteers are exempt from this requirement.
Consequence: The change makes the provision compliant with the *Code*.

22 VAC 15-50-50 is reorganized; some information deleted, some moved, and some changed

The requirement in part “A” of 22 VAC 15-51-50 that contract agencies and center staff shall accept only original criminal record reports is moved to 22 VAC 15-51-40.C and 22 VAC 15-51-50.A. A change is that center staff must have viewed an original criminal history record report from a contract agency or contract employee and then make and keep a copy on record if they do not choose to keep the original on site. The title of the report is changed from “Criminal Record Report” to “Criminal History Record Check” to reflect current *Code* language.

Consequence: The description of all satisfactory background checks results is in one place in the regulation. Center staff must still see an original criminal history record report, but there is a convenience for contract employees or contract agencies, who may keep the original.

The exception in “A” of the current regulation for facilities using temporary agencies allowing a letter that verifies receipt of the criminal history record report within 21 days of employment, requiring that the report is on file at the temporary agency, and requiring that the report does not contain barrier crimes is deleted. In the proposed regulation, at 22 VAC 15-51-40.C.3,

temporary agencies are considered contract agencies and conform to contract agency provisions. Those provisions are described in the paragraph above.

Consequence: Safety of children is enhanced because a temporary agency, now included as a contract agency, must show center staff original criminal history record reports. Copies are kept at centers. This is a convenience for the contract agency because it may keep the originals.

Maintenance and retention requirements of the deleted letter in “A” are deleted.

Consequence: Unnecessary information is deleted.

The requirements in part “B” that contract agency or facility staff must match name, social security number, and date of birth to some other form of identification, and that a new criminal history record request must be made if any information does not match, are deleted. The Virginia State Police has procedures for any individual who believes his criminal history record report is incorrect. Section 22 VAC 15-51-50.B.3. has provisions for instances in which there is a question about a satisfactory background check.

Consequence: Verification of satisfactory background checks is expanded by requiring any of the three background checks to be repeated if there is suspicion that someone has a barrier crime, any felony within the last five years, or a founded complaint of child abuse and neglect.

The requirement in “C” about validity of criminal record report, now called criminal history record report due to recodification language changes in the *Code*. The current wording is “as long as the [person] remains in continuous service at the same facility.” The proposed regulation is “before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.” It expands the affected individuals to include any applicant, licensee, agent, employee, or staff volunteer who is required to have background checks. These changes are in 22 VAC 40-191-40.B. The validity of all three background checks is addressed at that location in the proposed regulation.

Consequence: The proposed regulation includes all background checks. The proposed regulation increases protection to a vulnerable population by requiring resubmission of background checks every three years.

The requirement in “D” that a new criminal record report and sworn disclosure statement are required when an individual terminates employment or ceases volunteer work at one facility and begins work at another facility is moved to 22 VAC 15-51-40.B. The requirement is changed to reflect the new *Code* terminology of “criminal history record report” and “sworn statement or affirmation.”

Consequence: The proposed regulation language is consistent with current *Code* terminology. The new placement reflects the current additional requirement for searches of the central registry.

Another change to “D” is that, at its new location at 22 VAC 15-51-50.B.1, the proposed regulation allows a person to take with him any criminal history record report, or central registry finding less than 91 days old. In this case, 1) a copy of the report must be made and 2) a notation made that it is a copy and that the original of any criminal history record report was verified.

Consequence: The change is a cost-savings to anyone required to furnish background checks because the person may go to another location within 90 days without a new background check. The impact on child safety is minimal because the effective time period is only three months.

The first and second exceptions in part “D” are moved to 22 VAC 15-51-40.B.6. The exceptions are also changed and expanded. The current requirements are that: 1) “when an employee transfers to a facility owned and operated by the same entity, with a lapse in service of not more than 30 days, a new criminal record report shall not be required” and 2) “a criminal record report for an individual who takes a leave of absence will remain valid as long as the period of separation does not exceed six consecutive months.” These requirements are changed to provide that “a background check remains valid at a licensed child day center if no more than 12 consecutive months have passed from when a person: a) began a leave of absence from that center; b) was terminated from employment at that center; or c) was transferred to a center owned and operated by the same employer or entity.”

Consequence: The information in this part is now easier to find because it is located in the section describing when the three background checks are required. It will be a cost savings to employers. They will be able to bring back former employees, or move them to other centers they own or operate, within a year without having to obtain another set of background checks.

22 VAC 15-50-60 Information moved to a new section, and expanded

The current 22 VAC 15-50-60 section is moved to 22 VAC 15-51-70 and is expanded.

Consequence: In the proposed regulation, information about maintenance of background checks records appears in the sequence in which it occurs in the background checks process.

The current regulation, at 22 VAC 15-50-60.A, that provides that “the original report shall be maintained at the facility where the person is employed, volunteers or is approved,” is expanded at 22 VAC 15-51-70.A. The proposed language explains that background checks records must be kept at the location where the person is an applicant, agent, employee, contract employee, staff volunteer, or is any other adult who is involved in the day-to-day operations of the center or who is alone with, in control of, or supervising one or more children.

Consequence: Confusion is avoided by listing those affected by the requirement.

The current regulation at 22 VAC 15-50-60.A is clarified at 22 VAC 15-51-70.A.1 by providing a choice when a center is among two or more owned by the same entity. The choice is that the background checks records may either be kept at corporate headquarters **or** at the center where the person is working. In either case, they must be made available to the Department representative upon request.

Consequence: The Department representative has access to background checks records, but the owner can decide which is the best place to keep records.

22 VAC 15-50-70 Section is deleted

The board member criminal record check requirements are deleted from the proposed regulation because they are no longer relevant. One of the 2002 *Code* recodification changes was to

eliminate background checks requirements for board members unless they are otherwise required to obtain the checks.

Consequence: The proposed regulation complies with *Code* recodification.

22 VAC 15-51-50 New Section

This new section identifies for affected parties requirements for satisfactory background checks results. It clarifies that all background checks information must be made available to Department representatives upon request. Part “A” explains that a satisfactory sworn statement or affirmation is a fully completed original stating that the person does not have a criminal conviction that is a barrier crime or is any felony conviction within the last five years. It also includes a statement that the person is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. There is also a statement providing that there is no other knowledge of a disqualifying background. It includes two caveats from the *Code* definition of “offense” at §63.2-1719. The first is that criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. The second is that convictions also include equivalent to the barrier crimes set out in this regulation.

Consequence: Providing this information lessens misinterpretation of background checks results.

Part “A” also explains that a satisfactory central registry finding is one in which a copy of the Department’s child protective services form indicates that, as of the date on the reply, the individual whose name was searched was not identified in the Central Registry of Founded Child Abuse/Neglect Investigations as an involved caregiver with a founded disposition of child abuse/neglect, and there is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.

Consequence: Providing this information lessens the opportunity for misinterpretation of a satisfactory finding.

This part also explains that a satisfactory criminal history record check report is one in which an original hard copy or internet inquiry reply from the Virginia State Police is returned with no convictions indicated, or convictions indicated, but no barrier crimes or no other felony convictions in the previous five years. In addition, there is no other knowledge that the individual has a barrier crime, or other felony conviction in the past five years, in Virginia or elsewhere.

Consequence: Providing this information lessens the opportunity for misinterpretation of a satisfactory report.

Part “B” spells out how long background checks are valid. “B.1” allows a person to leave a licensed child day center and take the criminal history record report or central registry finding with him, if the report or finding is less than 91 days old. In this case, the center must keep a copy of any report a person takes and write on it that it is a copy.

Consequence: This provision provides a cost savings to individuals and centers while ensuring that adequate documentation is maintained.

Further, “B.2” provides that a background check remains valid at a licensed child day center as long as no more than 12 consecutive months have passed from when a person began a leave of absence from that center, was terminated from employment at that center, or was transferred to a center owned and operated by the same employer or entity.

Consequence: This allowance is convenient for centers that use repeat seasonal volunteers and employees, or that wants to shift staff from site to site. It is also a convenience to any individual who wants to return to a previous center.

Another addition, at “B.3 and 4,” is the authority for a licensed child day center or the Department to require a new background check if there is reason to suspect that a person who has submitted acceptable background checks has a disqualifying background. In this situation, the center or Department has the choice of either: a) allowing the person to continue in the same relationship to the center until receipt of new background check information or b) requiring that the person not be alone with children.

Consequence: This provides an important safeguard in instances when new information becomes available about an individual who has current satisfactory background checks on file.

Part “C” references where to find applicable information about waivers.

Consequence: This reference serves as a useful prompt for those who wish to understand waiver provisions.

22 VAC 15-51-60 New Section

This new section describes the consequences of unsatisfactory background checks results. It is provided to facilitate use of the regulation. Part “A” spells out that applicants are denied a license when there are unsatisfactory background checks for: a) applicants and b) agents at the time of application who are or will be involved in the day-to-day operations of the licensed child day center or who are or will be alone with, in control of, or supervising one or more of the children.

Consequence: This is regulatory language to back up denials by the Department.

Part “B” provides that an employee or volunteer of a licensed child day center must not be employed or provide volunteer service until the center has the person’s completed sworn statement or affirmation.

Consequence: This will reduce the likelihood that centers will allow people to work or volunteer before they have the completed sworn statement or affirmation.

Part “C” explains that an employee or volunteer of a licensed child day center must be denied continued employment or volunteer service if the center does not have the original criminal history record report or central registry finding within 30 days of employment or volunteer service.

Consequence: Children’s safety will be enhanced because centers are not allowed to delay requesting background checks.

The exception, at “D,” is that an employee may continue to work or provide service in a licensed child day center if the center has documentation that the criminal history record request or the

request for search of the central registry was submitted within seven calendar days of the person being employed or volunteering, even if the report is not returned within 30 calendar days. Within five working days after the 30th day, the requestor must contact the Central Criminal Records Exchange of the Virginia State Police, or the Child Protective Services Unit of the Department to verify receipt of the request. If the request was not received, the requestor must submit another request within five working days after the contact.

Consequence: Centers will understand that they have protection from administrative delay not of their making, but this is true only if they submit requests in a timely manner.

Part “E” specifies that, if the Department or a local agency becomes aware that a person covered by this regulation has a disqualifying background, the Department or local agency may release this information to licensed child care centers.

Consequence: This addition increases the likelihood that centers will know about a possible disqualifying background and have the opportunity to require another background check.

Part “F” requires licensed child day centers to inform compensated employees and volunteers that the centers are requesting child protective services registry checks and criminal history record reports for them.

Consequence: This is a courtesy to persons being checked. Neither the request forms nor the *Code* requires notification.

Part “G” allows a licensed child day center to obtain a national criminal background check, instead of the criminal history record check, for employees and volunteers. If a center chooses this alternative, it must adhere to Virginia State Police requirements for obtaining fingerprints. In this case, a national criminal background check result of “qualified” from the Virginia State Police will suffice as a satisfactory result. If the result is “disqualified,” the center must obtain a satisfactory criminal history record check through the Central Criminal Record Exchange for the person if: a) the center wishes to employ the person or approve the person as a volunteer or b) the center wishes the Department to issue a license.

Consequence: The proposed regulation acknowledges the provision in the *Code* allowing use of the national criminal background check for employees and volunteers. It explains the requirements for a satisfactory national criminal background check.

11 VAC 15-51-70 New Section

Refer to comments for 22 VAC 15-51-60.

In addition, Part “A” allows a licensed child day center to keep copies of background checks records on site if the center is not the primary work place for a person. In this instance, the center must keep documentation of the place where the original background check records are kept, and copies are kept with a statement that the center designee has viewed the original sworn statement or affirmation and criminal history record report. Note that the *Code* does not require an original central registry check finding.

Consequence: This provision gives access to background checks information by Department representatives, while allowing centralized record-keeping at an individual’s primary work site.

Part “B” specifies that licensed child day centers must keep all background check information for one year after a person required to provide background checks terminates his duties with a center.

Consequence: There will be consistent interpretation of requirements for keeping background checks records across child welfare agencies.

The provision in the current regulation, at 22 VAC 15-50-60.D, that the files are accessible only to the licensee, administrator, registered provider, board president, or their designee is changed. Part “C” stipulates that applicants and agents, and their designees, are the only center staff who may have access to these documents. The provision that the board president must have access to these documents is deleted.

Consequence: The new terminology provides for applicants to maintain background checks records prior to being regulated. It identifies who has access to background checks documents.

Part “D” explains that people who are denied a license because of background checks information must be given a copy of the disqualifying documentation. It makes clear that people have the right to receive a copy of their background check information upon request. This part further provides that further dissemination of the background check information is prohibited other than to the Commissioner’s representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. The note refers the reader to related provisions at 22 VAC 15-51-60.E.

Consequence: The addition mirrors *Code* recodification language. It also is consistent with legal interpretation from the Office of the Attorney General.

22 VAC 15-51-80 New Section

The waiver of certain criminal convictions was added to the *Code* during the 1998 session of the General Assembly. The *Code* provides for the State Board of Social Services to promulgate regulations to implement the waiver. This section describes “waiver” and informs the reader of the location of the associated regulation.

Consequence: The reader has an explanation of the term waiver and knows where to find the associated regulation.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Child Day-Care Council has authority to promulgate regulations necessary to carry out provisions in the *Code*. This regulation performs that function for Title 63.2, Subtitle IV (Licensure), Article 3 – Background Checks. The revisions required to comply with changes in the *Code* were so extensive that it was prudent to repeal the existing regulation and promulgate a new regulation.

The other alternative was to include provisions not explicitly referenced in the *Code* in a separate guidance document. That alternative would have required center staff to work from two documents simultaneously and would have likely resulted in misunderstanding and higher levels of noncompliance.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

There was one public comment. It suggested that “offense” be defined in the proposed regulation.

Agency Response: This definition was not added to the proposed regulation.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Agency staff incorporated section headings designed to improve clarity. Staff also incorporated recommendations as approved by the Office of the Registrar.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

A review of the regulation will take place in accordance with the schedule for four-year periodic reviews.